COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

Criminal Appeal No.874 of 2001

(Old Case No.1854 of 1993)

Balwant Singh son of Bhupal Singh Negi
R/o village Selabgarh (Megari State)
Patwari Kshetra Pinglo Tahsil Bageshwar
District Almora ..... Appellant

Versus

State of U.P. ..... Opposite Party

Sri Vivek Shukla and Sri Yogesh Pacholia, learned counsel for the appellant.
Sri M.A. Khan, learned brief holder for the State.

Approved for reporting.
~~Not approved for reporting.~~

Dated: 19.11.2007

(Dharam Veer, J.)

Reserved
Court No.7

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

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Dated: 19.11.2007

Hon'ble Dharam Veer, J.

This criminal appeal, preferred under Section 374 (2) of The Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.), is directed against the judgment and order dated 27.09.1993 passed by Sessions Judge, Almora in Sessions Trial No.40 of 1992, State v. Balwant Singh, whereby the learned Sessions Judge has convicted the appellant under Section 376 of The Indian Penal Code, 1860 (hereinafter referred to as I.P.C.) read with Section 511 I.P.C. and Section 377 I.P.C. and awarded sentence for five years' R.I. under Section 376 I.P.C. read with Section 511 I.P.C. and five years' R.I. under Section 377 I.P.C. and has directed that both the sentences shall run concurrently.

2. In brief, the prosecution case is that in the evening of 24.07.1992, Km. Kamla Devi (P.W.1), a minor daughter aged about 7 years of complainant Balwant Giri

(P.W.3), resident of village Saila Bagarh, Maigdi Estate under Patwari Kshetra Pinglon, was sent to a shop to buy cigarettes for her father and when she came back to her house, she was in an inured condition. Her father Balwant Giri did not pay attention towards his daughter's condition, but on 25.07.1992, when condition of Km Kamla Devi deteriorated, he inquired about the cause from, Km. Kamla Devi and according to the prosecution story she told that accused Balwant Singh son of Bhupal Singh had committed rape with her after seducing her by giving a note of Rs.2. Balwant Giri (P.W.3) wrote a report of this occurrence on 26.07.1992 addressed to Patwari of Patwari Kshetra Pinglon through Gram Pradhan of Gram Sabha Maigdi Estate praying for permission of medical examination of Km. Kamla Devi, that report is Ex.Ka-1. Sri Balwant Singh Rawat, Patwari of Patwari Kshetra Galai, who was Incharge Patwari Kshetra Pinglon on that date, registered the case as crime no.3 of 1992 and the *Chik* report was prepared by him, the *Chik* report is Ex.Ka-3. The Patwari started investigation and Km. Kamla Devi was medically examined by the Medical Officer, Government Women Hospital, Baijnath (Garun) Almora on 28.07.1992 at 9.30 A.M., the medical report is Ex.Ka-2. During the course of the investigation, the Patwari (Investigating Officer) prepared the site plan of the place of occurrence i.e. Ex.Ka-4. The Patwari (Investigating Officer) also written a letter to the Chief Medical Officer, Women Hospital, Almora on 28.07.1992 for the treatment of Km. Kamla Devi, the carbon copy of the letter is Ex.Ka-6. The Patwari also wrote a letter to the Medical Officer, Women Hospital, Baijnath on 28.07.1992 for the report after conducting the medical examination and for the treatment of Km. Kamla Devi,

the carbon copy of that letter is Ex.Ka-7. During the course of the investigation, the Patwari (Investigating Officer) recorded the statement of the witnesses (in the rural areas of hill Districts of Uttarakhand the Patwaris are vested with the police powers) and after completing the investigation, he filed the charge sheet against the accused appellant on 20.10.1992 under Sections 376 and 377 I.P.C., the charge sheet is Ex.Ka-5.

3. Learned Munsif Magistrate, Almora committed the case to the Court of Session on 18.11.1992 under Section 209 Cr.P.C. after complying the provisions of Section 207 Cr.P.C.

4. Learned Sessions Judge, Almora framed charges on 06.01.1993 against the present accused-appellant under Sections 376 & 377 I.P.C. and the charges were read over and explained to the appellant who pleaded not guilty and claimed to be tried.

5. To prove its case the prosecution examined P.W.1 Km. Kamla Devi (victim and minor girl), P.W.2 Lakshman Singh, P.W.3 Balwant Giri (complainant and father of the victim), P.W.4 Dr. Radha Arya, who medically examined victim Km. Kamla Devi and P.W.5 Hayat Singh, Patwari (Investigating Officer). After that the statement of the appellant was recorded under Section 313 Cr.P.C., who denied the allegations made against him and in defence he did not produce any oral or documentary evidence.

6. After appreciating the evidence on record and hearing learned counsel for both the parties, learned

Sessions Judge, Almora has convicted the appellant under Section 376 I.P.C. read with Section 511 I.P.C. and Section 377 I.P.C. and awarded sentence for five years' R.I. under Section 376 I.P.C. read with Section 511 I.P.C. and five years' R.I. under Section 377 I.P.C. and has directed that both the sentences shall run concurrently.

7. Against the said judgment and order, the appellant has preferred the instant appeal.

8. I have heard Sri Vivek Shukla and Sri Yogesh Pacholia, learned counsel for the appellant as well as Sri M.A. Khan, learned brief holder for the State and perused the entire record of the trial court.

9. To prove its case the prosecution has examined P.W.1 Km. Kamla Devi, aged about 7 years as stated by her. Learned Sessions Judge, Almora has observed that Km. Kamla Devi appears to be 7-8 years of age. She does not understand solemnity of oath and therefore oath is not administered to her and her statement has been recorded in question-answer form in Kumaoni dialect, translated into Hindi. Km Kamla Devi has answered in reply to the question that she knows the accused-appellant very well, who is standing handcuffed in the court and his name is Balwant Singh. She has further answered that about one year before at about 7.30 P.M. the incident took place when her father sent her to buy cigarettes from the shop. She further answered that she purchased cigarettes from the shop and Balwant Singh met her and gave her Rs.2/- and carried her to bushes of 'Banj'. She has further answered that no one was there except she and the accused-appellant. She has further answered that the

accused-appellant removed her Pyjama and his trousers and committed rape with her firstly from front side and when she wept, he committed carnal intercourse against the order of nature and thereafter, she was weeping and the accused ran away. She has further answered that she came to her house and did not tell the occurrence to anybody due to fear and in the evening of next day, she rose from her bed and told about the occurrence to her father and she was carried to Baijnath Hospital by her father. She has further answered that at the time of occurrence she was wearing black Pyjama and green shirt and the Pyjama was washed by her mother in the next morning. She has also answered that she was also carried to Almora Hospital where she remained hospitalized for about six days in connection with her treatment. In the cross-examination, she has answered that she does not know the year and month and the time of occurrence but her father told her that the incident had taken place about one year before and the time was about 7.30 A.M. She has further answered that she went to the Patwari and the Doctor on her own feet. She has further answered that firstly she was carried to Patwari and thereafter she was carried to Doctor at Baijnath not at Garun. She has further answered that she visited Baijnath and Garun and Garun is farther than Baijnath from her house and she admitted that her father carried her to Garun also that day and also admitted that the Doctor had treated her at Baijnath and further answered that some medicines were given to her from the hospital and for that her father had got the slip prepared and thereafter she was carried to her house by her father. She has further answered that she does not know when the report was written. She has admitted

that she was treated at home by her mother before being taken to the Doctor and the medicine was taken by her father from Baijnath and that medicine was applied at her anus and not at the front side. She has further answered that she did not feel pain from that medicine but it cured. She has further answered that she narrated the occurrence to the Patwari then the Patwari wrote the report and she has further answered that she narrated the occurrence to Patwari as well as the court as her father had told her. She has further answered that her father told her that she had to say that Balwant had raped with her and also had done carnal intercourse. She admitted that she narrated the occurrence to the Patwari due to fear. She has also admitted that her father asked money from the father of accused-appellant, but no money was paid by the father of the accused-appellant and thereafter, her father initiated proceedings when father of accused-appellant did not pay money. She has further answered that the Doctor at Baijnath applied medicine at her anus and not at front side but she has further answered that the Doctor applied the medicine at the front side also. She denied the question that Doctor at Baijanth had not treated her as had been said by her to the Patwari. She has further answered that the Patwari has wrongly written that her treatment was not done at Baijnath and she has admitted that she did not tell the Patwari about the threat given by her father and also admitted that she did not tell that fact to Patwari due to fear of her father and she has further admitted that she is telling this fact in the court without fear of anybody. She has further answered that the Patwari had not seen her vagina and denied the question that the Patwari had seen her vagina. She has further

answered that Balwant Singh lives in her village peacefully and further answered that Balwant Singh is a bad man. She has further answered that Balwant Singh is said to be bad man by her family. She has admitted that the father of the accused-appellant did not give money to her father. The evidence of this witness is reliable and believable and whatever inconsistencies are in her statement can be ignored considering her tender age.

10. P.W.2 is Lakshman Singh, who has stated in his statement that he knows accused-appellant Balwant Singh as well as victim Km. Kamla Devi. He and accused-appellant live in the same village. He was running the shop of tea. He does not know the date of occurrence. He sold the cigarette to one girl after taking money and after buying the cigarette the girl went away. He has further stated that the girl (Km. Kamla Devi), who is present in the court had bought the cigarette from his shop and thereafter she went from his shop. He did not listen anything. This witness was cross-examined by the defence counsel but nothing has come out from his statement which may create any doubt in his evidence. The evidence of this witness is also reliable and believable.

11. P.W.3 is Balwant Giri, who is the father of victim Km. Kamla Devi and complainant of the case. He has stated that he knows accused-appellant Balwant Singh, who is present in the court. Km. Kamla is his daughter. He had sent his daughter to the shop of Lakshman Singh to buy cigarette and for that he had given Rs.3/- to her. She returned from the shop faded

and slept inside the house. On 25.07.1992, she told the occurrence to him and at that time she was lying in the bed. He has further stated that his daughter told him that accused-appellant Balwant Singh had carried her in bushes holding her in his lap and in bushes Balwant Singh committed rape and carnal intercourse against the order of nature with her, consequently she cried due to pain. On that date, he could not lodge the F.I.R. owing to night. On 26.07.1992, he carried Km. Kamla Devi to Baijnath Hospital where the Doctor told that when he got it written from Gram Pradhan and Patwari, he (Doctor) would treat Km. Kamla Devi. He has further stated that thereafter he met Gram Pradhan and got the report written from Gram Pradhan, who read over the report to him and he signed on that report, i.e. Ex.Ka-1. He has further stated that thereafter he went to meet Patwari along with the report but he could not succeed. Thereafter, he went to meet the Patwari concerned and got the report written and after getting the report written from Patwari, he carried the victim to Baijnath Hospital where she was medically examined. After that he carried the victim to Government Hospital, Almora where she was treated for four days and then he carried his daughter to his house at his own risk because he was not able to afford the expenses at Almora. He has further stated that when his daughter had told the occurrence and named accused-appellant Balwant Singh, he told his daughter if any officer enquired about the occurrence, she would have to tell truthfully. He has further stated that the clothes of the victim had been washed by her mother. In cross-examination, he has stated that he got only one report i.e.Ex.Ka-1 written and that report was submitted before the Patwari and the only concern about

the above said report written by the Gram Pradhan is that he went to Gram Pradhan along with the report and the name of Gram Pradhan is Ramesh Singh, who told him to submit that report to Patwari. In para 18 of the cross-examination, he has stated that it is wrong to say that he had told his daughter to make false statement about the rape and carnal intercourse. Whatever she has stated has been stated with her own will. He has further stated that it is wrong to say that he demanded money from the father of the accused-appellant regarding this occurrence. On the contrary, the father of the accused appellant was talking with him about the compromise of this occurrence but he was not ready. The father of the accused-appellant did not give any money to him and if anyone tells that he received money, it is a wrong fact. He has further stated that when Km. Kamla had told him about the occurrence on 25.07.1992, he saw her blood stained clothes. Her entire Pyjama was soaked with blood and that blood was oozing from her vagina and anus. He has further stated that she herself had told him about the occurrence but he had not seen the blood soaked Pyjama in the evening of 24.07.1992. This witness was cross-examined by the defence counsel at length but nothing has come out from his statement which may create any doubt in his evidence. The evidence of this witness is also reliable and believable.

12. P.W.4 is Dr. Radha Arya, who has stated that she was posted at Women Hospital, Baijnath since April 1991 and on 28.07.1992 she was also posted there as Medical Officer. Km. Kamla Devi, aged 7 years as was said by the Patwari, was brought to Women Hospital, Baijanth by Mohan Ram, peon of Patwari Pinglo along

with her father on 28.07.1992 at 9.30 A.M. and she examined the victim. She has further stated that in external and internal examination she found the following facts:

I. In external examination, no injury was found.

II. While examining the private part, she found in public area.

(i) Labia majora is swollen and tender to touch and lacerated.

(ii) Labia minora red, painful. Tender to touch and swollen.

(iii) P/R vaginal examination is very painful allows one little finger.

(iv) P/R examination: anus was red, tender and painful.

(v) Incontinence of urine and defalcation is present.

13. She has further stated that Km. Kamla was referred to District Hospital, Almora for further examinations and treatment. She has further stated that in her opinion Km. Kamla would be about 7 years of age and sexual intercourse was committed with Km. Kamla through vagina and anus. She has further opined that both rape and carnal intercourse against the order of nature were committed with Km. Kamla before 48 hours from the time of medical examination. She has further opined that the rape and carnal intercourse could possibly be committed on 24.07.1992 between 7-8.00 P.M. and she proved her report Ex.Ka-2. In para 12 of cross-examination, she has stated that in her opinion no penetration in vagina was done but effort was made to do so and there is complete penetration in anus. In para 13, she has further stated that when Km. Kamla was brought to her, no medicine was applied on her. Km. Kamla was also brought to her on 27.07.1992 by her father for the treatment. She gave medicine to stop bleeding but when the medical certificate was asked for from her, she said

that she could not give certificate unless the victim would be sent to her officially for medical examination. In para 14, she has stated that the slip of the medicine which was given to Km. Kamla on 27.07.1992 was prepared and on that slip the method of treatment and name of medicines were written and that slip is not in her possession because no entry was made in the Hospital since it was Sunday on that day and the victim was brought by her father to her (Doctor) house and on 27.07.1992 she gave sleep-inducing drug to the victim but did not give any ointment. In para 18, she has further stated that bloodstains are removed from water. On 27.07.1992, the blood was oozing from her private part when Km. Kamla was brought to her house and the victim was wearing Salvar, which was soaked in blood. She has further stated in para 19 of the cross-examination that she did not take vaginal smear because there was no facility to take that in the hospital. She referred the victim to the District Hospital for confirmation of her opinion and further treatment.

14. P.W.5 is Sri Hayat Singh (Investigating Officer), who has stated that he is posted as Patwari Pingalo since 01.10.1992. Sri Balwant Singh, Patwari Kshetra Gasai was also incharge of that area before him. The enquiry of this case was transferred to him on 05.10.1992. He further stated that he recognizes the signature and hand writing of Balwant Singh, Patwari. He has further stated that on the basis of First Information Report, i.e. Ex.Ka-1, the *Chik* report was prepared and signed by Sri Balwant Singh Patwari and proved, which is Ex.Ka.-3. Site plan of the place of occurrence was also prepared and signed, which is Ex.Ka-4. He also proved Paper

Nos.6 Ka/1 & 6 Ka/2, which were prepared and signed by Sri Balwant Singh, Patwari, as Ex.Ka-6 and Ex.Ka-7. He also recorded the statement of the witnesses of this case and submitted the charge sheet i.e. Ex.Ka-5.

15. After that the statement of appellant was recorded under Section 313 Cr.P.C, who denied the allegations made against him and in defence he did not produce any oral or documentary evidence.

16. Sri Vivek Shukla and Sri Yogesh Pacholia, learned counsel for the appellant have submitted that the delay in lodging the F.I.R. has not been explained by the prosecution.

17. The argument advanced by the learned counsel for the appellant is not sustainable on the basis of the evidence as the said incident is said to be taken place on 24.07.1992 at about 7-8.00 P.M. in village Saila Bagarh and victim Km. Kamla Devi had told her father about the said occurrence in the evening of 25.07.1992 and Sri Balwant Giri, the father of the victim, got the F.I.R. written through the Pradhan addressed to patwari on 26.07.1992, which was registered by the Patwari on 27.07.1992. Accordingly, seeing the distance from the residence of the victim to the office of Patwari specially the circumstances prevailing in the hilly areas where the transport is not available and the people are walking on feet. Due to the above said facts and circumstances, the delay in lodging the F.I.R. has been explained properly and there is not delay in lodging the F.I.R.

18. Learned counsel for the appellant has further submitted that there is solitary evidence of Km. Kamla Devi is against the appellant and that evidence of Km. Kamla Devi does not inspire confidence, hence the appellant cannot be convicted on the solitary evidence, which does not inspire confidence.

19. This argument of the learned counsel for the appellant is also not sustainable in the eye of law and as per the evidence discussed above. From the evidence of P.W.1 Km. Kamla Devi, aged about 7 years, who has stated in her statement recorded in question-answer form since she did not understand the solemnity of oath. She has answered in reply to the question that she knows the accused-appellant very well, who is standing handcuffed in the court and his name is Balwant Singh. She has further answered that about one year before at about 7.30 P.M. the incident took place when her father sent her to buy cigarettes from the shop. She further answered that she purchased cigarettes from the shop and Balwant Singh met her and gave her Rs.2/- and carried her to bushes of 'Banj'. She has further answered that no one was there except she and the accused-appellant. She has further answered that the accused-appellant removed her Pyjama and his trousers and committed rape with her firstly from front side and when she wept, he committed carnal intercourse against the order of nature and thereafter, she was weeping and the accused ran away. She has further answered that she came to her house and did not tell the occurrence to anybody due to fear and in the evening of next day, she rose from her bed and told about the occurrence to her father and she was carried to Baijnath Hospital by her

father. She has further answered that at the time of occurrence she was wearing black Pyjama and green shirt and the Payjama was washed by her mother in the next morning. She has also answered that she was also carried to Almora Hospital where she remained hospitalized for about six days in connection with her treatment. Thus, the statement of victim Km. Kamla Devi inspires confidence (whatever inconsistencies are in her statement can be ignored considering her tender age) and her evidence is corroborated with the evidence of P.W.4-Dr. Radha Arya, who has stated that in her opinion Km. Kamla would be about 7 years of age and sexual intercourse was committed with Km. Kamla through vagina and anus. She has further opined that both rape and carnal intercourse against the order of nature were committed with Km. Kamla before 48 hours from the time of medical examination. She has further opined that the rape and carnal intercourse could possibly be committed on 24.07.1992 between 7-8.00 P.M. In para 18 of the cross-examination, she has stated that on 27.07.1992, the blood was oozing from her private part when Km. Kamla was brought to her house and the victim was wearing Salvar, which was soaked in blood. She has further stated in para 19 of the cross-examination that she referred the victim to the District Hospital for confirmation of her opinion and further treatment. Accordingly, the sole testimony of victim Km. Kamla Devi inspires confidence and corroborated with the evidence of P.W.4 Dr. Radha Arya as well as the injury report, i.e. Ex.Ka-2.

20. P.W.3-Balwant Giri has stated that he had sent his daughter to the shop of Lakshman Singh to buy

cigarette and for that he had given Rs.3/- to her. She returned from the shop faded and slept inside the house. On 25.07.1992, she told the occurrence to him and at that time she was lying in the bed. He has further stated that his daughter told him that accused-appellant Balwant Singh had carried her in bushes holding her in his lap and in bushes Balwant Singh committed rape and carnal intercourse against the order of nature with her, consequently she cried due to pain. On that date, he could not lodged the F.I.R. owing to night. On 26.07.1992, he carried Km. Kamla Devi to Baijnath Hospital where the Doctor told that when he got it written from Gram Pradhan and Patwari, he (Doctor) would treat Km. Kamla Devi. He has further stated that thereafter he met Gram Pradhan and got the report written and he signed on that report, i.e. Ex.Ka-1. He has further stated that thereafter he went to meet Patwari along with the report but he could not succeed. Thereafter, again he went to meet the Patwari concerned and got the report written and after getting the report written from Patwari, he carried the victim to Baijnath Hospital where she was medically examined. After that he carried the victim to Government Hospital, Almora where she was treated for four days and then he carried his daughter to his house at his own risk because he was not able to afford the expenses at Almora. He has further stated that when his daughter had told the occurrence and named accused-appellant Balwant Singh, he told his daughter if any officer enquired about the occurrence, she would have to tell truthfully. He has further stated that the clothes of the victim had been washed by her mother. P.W.2-Lakshman Singh has stated that he and accused-appellant live in the same village. He was running the

shop of tea. He does not know the date of occurrence. He sold the cigarette to one girl after taking money and after buying the cigarette the girl went away. He has further stated that the girl (Km. Kamla Devi), who is present in the court had bought the cigarette from his shop and thereafter she went from his shop. Thus, the evidence of P.W.3-Balwant Giri and evidence of P.W.2-Lakshman Singh also support the circumstances and statement given by P.W.1 victim Km. Kamla Devi.

21. Thus, the prosecution has proved the case against the accused-appellant under Section 376 I.P.C. read with Section 511 I.P.C. and under Section 377 I.P.C. beyond reasonable doubt.

22. On the basis of the evidence available on record, the judgment and order dated 27.09.1993 passed by the Sessions Judge, Almora in Sessions Trial No.40 of 1992 is correct and justified, as per the law. I am in full agreement with the judgment and order passed by the learned Sessions Judge.

23. In view of the above said discussions, the appeal is devoid of merits and is hereby dismissed. The conviction as well as sentence awarded by the learned Sessions Judge, Almora to the accused-appellant in Sessions Trial No.40 of 1992 is hereby confirmed.

24. Let the record of the case be sent back to the trial court concerned for compliance of the order.

(Dharam Veer, J.)

19.11.2007
RBS